

ATTACHMENT H- to Land Use Committee Report

Private Property Rights

1. Property rights on real property can be divided between private property rights and public property rights.
2. Property rights change with time and custom.
3. Private Property Rights
 - Sell
 - Lease
 - Mortgage
 - Subdivide
 - Grant easements
 - Derive benefit from use
 - Exclude access

These rights can best be viewed as a “bundle of sticks” with each stick representing a right. Each stick is separate and can be given, sold, rented to other parties. A right also includes the right to give that right to someone else.

4. Public Property Rights
 - Tax
 - Take for public use with compensation
 - Control use/prevent a nuisance that damages the community
 - Dispose in case of death without heirs

With the exception of the original thirteen colonies all land in the United States was originally public land. In the case of Western Montana this area came into the nation as a result of the Oregon Compromise of 1846 that divided the US and British Canada at the 49th parallel. Much of MT was settled under the Homestead Act that imposed many conditions on the property that become private. U.S. Government regulation on private property has a long history.

5. Takings- when government takes private land for a public purpose
 - Condemnation- government physically takes land for public use.
 - Regulatory takings:
 - Constitutional taking- defined by constitutional law. A high standard that usually demands the government has, through regulation, limited all reasonable use of the property.
 - Statutory taking- defined by state law and often a very low bar where almost any government regulation can result in taking claim.

Montana does not have a statutory takings law. A landowner suing for unlawful takings in MT must meet the relatively high national standards.